

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**DECLARATION OF CHRISTOPHER A. SEEGER IN OPPOSITION TO MOTION OF
CASE STRATEGIES GROUP (F/K/A NFL CASE CONSULTING, LLC),
IT STRATEGIES GROUP, INC., CRAIG SIENEMA, JAMES MCCABE,
LIBERTY SETTLEMENT SOLUTIONS, LLC, LIBERTY CONTINGENT
RECEIVABLES, LLC, LIBERTY SETTLEMENT FUNDING,
JMMHCS HOLDINGS, LLC, AND MARC HERMES,
TO CERTIFY QUESTIONS FOR IMMEDIATE APPEAL AND FOR STAY**

CHRISTOPHER A. SEEGER declares, pursuant to 28 U.S.C. § 1746, based upon his personal knowledge, information and belief, the following:

1. By Order dated April 25, 2012 (ECF No. 64), the Court appointed me as Co-Lead Counsel for the Plaintiffs in this multidistrict litigation ("MDL"). In its Amended Final Order and

Judgment approving the class action settlement in this MDL (ECF No. 6534), the Court confirmed my appointment as Co-Lead Class Counsel for the Settlement Class.

2. Having been appointed as Co-Lead Class Counsel, I am fully familiar with the matters set forth herein, including the procedural history of this litigation and the class-wide Settlement that this Court approved on April 22, 2015 (“Settlement”), as well as the facts and procedural history leading up to and following the Court’s issuance of the July 19, 2017 Notice & Order and the Court’s issuance of the September 12, 2017 Order. I submit this Declaration in opposition to the motion of Case Strategies Group (f/k/a NFL Case Consulting, LLC), IT Strategies Group, Inc., Craig Sienema, James McCabe, Liberty Settlement Solutions, LLC, Liberty Contingent Receivables, LLC, Liberty Settlement Funding, JMMHCs Holdings, LLC, and Marc Hermes, to certify questions for immediate appeal pursuant to 28 U.S.C. § 1292(b) and for a stay (ECF No. 8381).

3. Attached hereto as Exhibit A is a true and correct copy of the transcript, in its entirety, of the telephone conference held before this Court on August 30, 2017.

4. Attached hereto as Exhibit B is a true and correct copy of an excerpt of the transcript of the hearing on the Order to Show Cause before the Honorable James Orenstein, United States Magistrate Judge, on March 30, 2015, in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, No. 05-MD-1720 (MKB) (E.D.N.Y.).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 29, 2017

/s/ Christopher A. Seeger
CHRISTOPHER A. SEEGER
Co-Lead Class Counsel

Exhibit A

APPEARANCES: Continued

For Marvin Jones,
et al:

STEVEN C. MARKS, ESQUIRE
PODHURST ORSECK, PA
Sun Trust International Center
One Southeast 3rd Avenue
Miami, FLORIDA 33130

For National Football
League:

DOUGLAS M. BURNS, ESQUIRE
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019

For Justice Funds
and CSG:

RICHARD L. SCHEFF, ESQUIRE
MONTGOMERY MCCrackEN
123 South Broad Street
Avenue of the Arts
Philadelphia, PA 19109

Audio Operator:

CHRIS KUREK

Transcribed by:

DIANA DOMAN TRANSCRIBING, LLC
P.O. Box 129
Gibbsboro, New Jersey 08026
Office: (856) 435-7172
Fax: (856) 435-7124
Email: dianadoman@comcast.net

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I N D E XRD LegalPAGE

Ms. Benedetto

10, 16

Mr. Willingham

12

Ruling: The Court

19

Case Strategies Group

Mr. Scheff

21

Ms. Benedetto

25

1 (The following was heard at 10:25 a.m.)

2 THE COURT: Thank you. I'm sorry that it's -- that
3 it's discombobulated, but I think I've done the best I can.
4 Okay. And Chris and my -- and Andrew's been very helpful, who's
5 my law clerk. Okay. Are we on the record, Chris?

6 THE CLERK: We're good.

7 THE COURT: Okay. Why don't each of you identify
8 yourselves? First, Mr. Seeger, are you there alone or -- are
9 you there alone, or with Ms. Benedetto?

10 MR. SEEGER: No, Your Honor. I'm here, and my partner
11 Terri Benedetto is going to be handling the argument today.

12 THE COURT: Okay. Thank you.

13 MS. BENEDETTO: Good morning, Your Honor.

14 THE COURT: All right. And now let's see who's --
15 let's take the people from RD Legal Funding first.

16 MR. WILLINGHAM: Yes. Good morning, Your Honor.

17 THE COURT: Who's on from that?

18 MR. WILLINGHAM: David Willingham.

19 THE COURT: And who -- you're going to be speaking,
20 Mr. Willingham?

21 MR. WILLINGHAM: Your Honor, David Willingham on
22 behalf -- and Michael Roth, and Jeff Hammer from Boies Schiller
23 on behalf of RD Legal Entities and Roni Dersovitz personally.
24 And we are specially appearing.

25 THE COURT: Okay. Have you filed pro hac vice?

1 MS. BROTMAN: Your Honor, this is Ellen Brotman, I'm
2 local counsel. Good morning. And I'm happy to hear that you're
3 well, Your Honor. I'm local counsel for the RD Legal Funding
4 entities and Roni Dersovitz. I was unable to file the pro hac
5 vice motion last night, because we didn't have the notice
6 parties added yet.

7 So I will be doing that today.

8 THE COURT: Okay. Well on your representation, Ms.
9 Brotman, I'll certainly hear them, okay? Okay. Mr. Willingham,
10 Mr. Roth and Mr. Hammer -- Mr. Roth and Mr. Hammer, you will be
11 filing today, is that correct?

12 MR. WILLINGHAM: That is correct, Your Honor. We will
13 be filing --

14 THE COURT: Pro hac vice.

15 MR. WILLINGHAM: Yes.

16 THE COURT: Okay. That's fine. No problem, you can
17 speak. Okay. And then who else, is there another party that is
18 contesting the request for discovery relating to -- to what --
19 I don't want to characterize it now. But the funds that have
20 been extended to -- in the same way as RD Legal has extended it?
21 Who else is -- what other defendant is one the phone on that
22 issue?

23 MR. SCHEFF: Your Honor, this is Richard Scheff,
24 S-C-H-E-F-F --

25 THE COURT: No, no. No, you're actually very --

1 MR. SCHEFF: -- along with --

2 THE COURT: Mr. Scheff, your issue is very different
3 than that. Is there anyone who has somewhat the same issue --

4 MR. SCHEFF: That's right.

5 THE COURT: -- as RD Legal has?

6 MR. SCHEFF: Okay.

7 THE COURT: Do you, Mr. Scheff --

8 MS. BENEDETTO: Your Honor, Justice Funds may, but we
9 have not filed a motion against them yet. But Mr. Scheff does
10 represent them.

11 THE COURT: He represents --

12 MR. SCHEFF: Yeah, there's been no motion filed as to
13 Justice Funds at this point.

14 THE COURT: Oh, Justice Funds -- Justice Funds --

15 MR. SCHEFF: But I do represent Justice Funds.

16 THE COURT: -- is another -- and you are in a similar
17 situation as RD Legal, is that right?

18 MR. SCHEFF: Well I don't know what RD Legal does,
19 Your Honor. But -- and we have received a discovery request
20 from class counsel. We're told that a motion to compel will be
21 filed. But it has not been filed yet.

22 THE COURT: All right. Well let --

23 MS. BENEDETTO: Your Honor, this is Terri Benedetto
24 speaking. It's my understanding that both RD Legal and the
25 Justice Funds purport to purchase the assets, a percentage of

1 the class members' potential future monetary award.

2 THE COURT: Okay. Is that correct, Mr. Scheff?

3 MR. SCHEFF: It is. But my understanding, Your Honor,
4 is that all but three of those relationships have been converted
5 to loans under the State law where the player lives under a
6 State licensed agreement.

7 So they're all in accordance with State law. I
8 haven't -- I cannot tell you that I've done significant research
9 with respect to Justice Funds. I've done some, it's a recent
10 representation of mine.

11 And as I said, we have not received a motion to compel
12 at this point.

13 THE COURT: Okay. And, Ms. Benedetto, you're -- so
14 your motion to compel relates to -- to RD Legal, and to whom
15 else?

16 MS. BENEDETTO: To CSG, Your Honor, the -- formerly
17 known as NFL Case Consulting, who Mr. Scheff represents. But
18 they are not a "lender," they are a claims services entity.

19 MR. SCHEFF: That's correct, Your Honor.

20 THE COURT: So you're representing -- Mr. Scheff,
21 you're representing both Justice Funds and CSG, is that correct?

22 MR. SCHEFF: That is correct, Your Honor.

23 THE COURT: All right. And --

24 MS. BENEDETTO: Terri Benedetto speaking again. I
25 should also make Your Honor aware that counsel for the Legacy

1 Pro Sports, which I am slated to take a deposition of one of
2 their principals today and tomorrow, they noted Your Honor's
3 order concerning today's conference call. And although we have
4 not filed a motion against them because they have produced
5 discovery and are producing witnesses for depositions, they have
6 asked to be on this call, and I gave them a calling number.

7 Although I was clear to them that I was under the
8 impression that Your Honor's order did not cover them, I did
9 give them the conference call information, and they are on the
10 line.

11 THE COURT: Okay. Who is that? Would you like to
12 identify yourselves?

13 MR. EDELSBERG: Good morning, Your Honor. This is
14 Scott Edelsberg from Kopelowitz Ostrow.

15 THE COURT: And I assume that you're going to be
16 listening today, is that correct?

17 MR. EDELSBERG: Yes, Your Honor.

18 THE COURT: Okay. Good. All right. So I think -- is
19 there anyone I have not identified?

20 Okay.

21 MR. BURNS: Yes, Your Honor. This is Doug Burns from
22 Paul Weiss Rifkind representing the NFL parties.

23 THE COURT: Oh, yes. Okay. Yes. Is there anyone
24 else? Thank you. Is there anyone else? Is there anyone else?

25

Benedetto - Argument

9

1 All right. Okay. I think we have everyone --

2 MS. BENEDETTO: Your Honor?

3 THE COURT: Yes. Who is this?

4 MS. BENEDETTO: I believe you have -- I was saying --
5 it's Ms. Benedetto speaking, Your Honor, I was saying, I believe
6 that you have everyone.

7 THE COURT: Okay. Thank you. That makes some --
8 that's good. All right. And consistent with the request, Chris
9 is taking the record in this case and I'm going to ask you to
10 identify yourselves before you speak. Okay? All right. Let's
11 -- Ms. Benedetto, why don't you frame the issue? You have
12 compelled -- you compelled --

13 MS. BENEDETTO: Your Honor --

14 THE COURT: Why don't you address -- why don't you
15 address RD Legal first.

16 MS. BENEDETTO: Okay. Yes, Your Honor. RD Legal has
17 basically produced certain contracts that had already been made
18 public actually in the -- in the litigation before Judge Preska
19 in the Southern District of New York.

20 Other than that, they have refused to produce any
21 documents based upon their position -- a dual position that we
22 were obligated to serve them with a subpoena. And also they
23 claim that we're not entitled to any of the communications or
24 solicitations leading up to the class members entering into
25 contracts with RD Legal, because the contracts themselves are

Willingham - Argument

10

1 sufficient --

2 THE COURT: Okay. Well --

3 MS. BENEDETTO: -- are sufficient with respect to both
4 entities, is that -- because Your Honor presides over the rest
5 in this case, and these entities purport to take percentages of
6 class members' potential future monetary awards, that Your Honor
7 has jurisdiction over them -- both because Your Honor presides
8 over the rest, and because Your Honor has MDL and All Writs Act
9 powers.

10 THE COURT: All right. Ms. Benedetto, what -- what do
11 you need these for? I mean, you now -- you have the agreements,
12 don't you?

13 MS. BENEDETTO: Yes, Your Honor.

14 THE COURT: You have the agreements. And as I
15 understand -- what?

16 MS. BENEDETTO: I want to make sure that nobody
17 entered into any agreements based upon solicitations or
18 communications which may have misled the class members with
19 regard to basically what they were getting themselves into.

20 THE COURT: Okay. Would you like to respond -- who's
21 going to be responding for RD Legal?

22 MR. WILLINGHAM: Yes. This is David Willingham on
23 behalf of the RD Legal entities and Mr. Dersovitz. I -- I --
24 Your Honor, one, I -- I thank the Court for its time, and I wish
25 the Court well. Two, with regard to the Court's statement, RD

1 Legal is in a different position here.

2 It has produced those contracts voluntarily. And in
3 the course of the meet and confer, it made very clear that to
4 the extent that RD Legal is a third party, it seeks and will
5 uphold the protections of Rule 45 under the Federal Rules of
6 Civil Procedure, and have the right to, (a) object to any
7 subpoena, or any -- well any process, including a subpoena,
8 should it be issued.

9 But certainly has the right to enforce that Rule. It
10 has not received a subpoena for documents, or a subpoena for
11 testimony. And to the extent that it does, the documents that
12 would be called for are -- would be burdensome to collect,
13 certainly.

14 When the contract at issue, as we have just been able
15 to compile for the Court in its opposition, these contracts make
16 clear that RD Legal is different, as the Court remarked.

17 RD Legal is not a lender. It purchased percentages
18 for more than \$1.6 million to date outlay to NFL players, in
19 terms of cash payments to NFL players, for the right to a
20 percentage of some of the recovery of those players, clearly not
21 all.

22 If you take a look at our opposition on page three,
23 there is a chart of what was purchased and the percentage of
24 recovery that RD Legal would be entitled to. And every day that
25 goes by actually costs the -- some of those NFL players money,

Willingham - Argument

12

1 because RD Legal would be further obligated to pay further
2 monies to certain NFL players in the form of rebates on the
3 purchase.

4 And we tried to highlight that as of October 31st what
5 would happen if those players were paid by then. So, Your
6 Honor, to the extent --

7 THE COURT: Are you asking -- are you asking this
8 amount from -- from the disbursing agent, or are you asking this
9 -- whom are you asking this money from?

10 MR. WILLINGHAM: Your Honor, the claims administrator
11 has refused to pay those amounts directly. It is the NFL
12 players that are obligated to pay it themselves once they
13 receive funds, the issue of --

14 THE COURT: Okay.

15 MR. WILLINGHAM: -- you know, who and what is frankly
16 not before the Court in this moment. It is simply an issue of
17 the discovery requests that have been made.

18 THE COURT: I understand that.

19 MR. WILLINGHAM: And what --

20 THE COURT: Because -- when you have a class action,
21 you think -- you think that everything's before you, and usually
22 you're right, Mr. Willingham.

23 MR. WILLINGHAM: Yeah. Yeah, but obviously it's not
24 a ripe issue, and those claims have not -- those issues have not
25 been presented quite yet, Your Honor.

Willingham - Argument

13

1 And what is clear from the contracts, Your Honor, is
2 RD Legal did act differently. These contracts, in bold print,
3 encouraged everybody to get their own counsel, they required
4 spousal consent. The terms of the contract mandated that each
5 and every player register with a credit counseling service, and
6 provide evidence of that before any monies were outlaid to them.

7 So it just makes no sense to us why the class counsel
8 would expend these types of resources. And that was portion of
9 our meet -- when we talked sources about meet and confer, why
10 these types of resources, when they have the contracts, and
11 they're limited contracts RD Legal engaged in, there's only
12 seven, really mandate going down this path.

13 And we attempted to meet and confer on those issues,
14 and obviously got nowhere. So --

15 THE COURT: All right. One second -- okay, go on.
16 Please finish. I'm sorry.

17 MR. WILLINGHAM: Our position is fairly simple. That
18 Rule 45 needs to be followed. And to the extent that the
19 subpoena then, if we were to get one, mandates burdensome
20 production, or things that are not called for in terms of third
21 party discovery we -- we would object to that, because we are
22 simply -- the issue that is before the Court is simply different
23 from what RD Legal engaged in.

24 THE COURT: Ms. Benedetto, how -- there are -- I guess
25 it's -- they named in their papers, I guess seven or eight

Willingham - Argument

14

1 players, is that correct? I don't have it in front of me.
2 Seven or eight players that -- that you know about who have
3 entered into these agreements, is that correct? Hello? Hello?

4 (Phone disconnects)

5 MR. WILLINGHAM: Was that a question for Ms.
6 Benedetto, Your Honor?

7 THE COURT: Yes. Ms. Benedetto, yes. How much
8 information do you have? Let Ms. Benedetto answer that
9 question. Ms. Benedetto, how much of this information do you
10 have? Do you have the contracts?

11 MR. WILLINGHAM: I think her line -- Your Honor, that
12 was the sound we heard. I think she might have gotten
13 disconnected.

14 THE COURT: Oh, my. One second. I don't -- what do
15 you want to do? Can I -- should I -- you want to reconnect?

16 MR. STAHL: She's going to call back -- I'm sure
17 she'll call back in. I think she was on a cell phone, she might
18 -- and her line just got dropped. We heard -- I heard a noise
19 that sounded that way.

20 THE COURT: Hello? Is everybody else still on?

21 MR. SCHEFF: Yes, Your Honor. This is Richard Scheff.
22 We're still on.

23 MS. BENEDETTO: Your Honor -- my apologies. I tried
24 to pick up and speak to you directly. I'm in a hotel room, and
25 the speaker phone was causing problems, I tried to pick it up

Benedetto - Argument

15

1 and I got discontinued. This is Terri Benedetto back on again.

2 THE COURT: Okay. All right. What -- what
3 information -- Ms. Benedetto, what information -- Chris, are you
4 still on the record?

5 THE CLERK: We're still here.

6 THE COURT: Chris?

7 MR. STAHL: We're on the record, Judge.

8 THE COURT: Oh, good. Ms. Benedetto, tell me who --
9 who -- what information do you actually have at this stage?

10 MS. BENEDETTO: With regard to RD Legal, we have --

11 THE COURT: Yes. RD Legal. Yes, RD Legal.

12 MS. BENEDETTO: Yes. They were filed, and as Your
13 Honor -- we did file a notice before Your Honor to give you
14 judicial notice of the fact that we had sought to file an amicus
15 brief before Judge Preska to ask her to refer to Your Honor in
16 interpreting our settlement agreement, vis-a-vis whether or not
17 assignments were even permitted, which is the vehicle which RD
18 Legal used to do these asset purchases.

19 And the settlement agreement in our -- and our
20 position is that the settlement agreement prohibits assignments.
21 There's a --

22 THE COURT: Well I don't -- I haven't spoken -- I
23 obviously haven't spoken to Ms. Preska yet. But right now this
24 is before me, and I have a -- I will discuss -- as soon as I get
25 back on Monday, I expect to talk with her, and I'm going to --

Benedetto - Argument

16

1 Chris, make sure that that's set up, okay?

2 MS. BENEDETTO: Yes, Your Honor.

3 THE COURT: Okay. Andrew, make sure that's set up
4 okay?

5 MR. STAHL: Yes, Judge.

6 THE COURT: Okay. Tuesday, I mean, not Monday.
7 Tuesday. As I understand it, whatever you're doing in that
8 right now, is in that Court, it's not in my Court yet. And it's
9 my job at this stage just to make -- I set a hearing and I
10 wanted to make an inquiry, because of the deep concerns that I
11 had. So it seems to me that I don't know what other information
12 -- I mean, it may very well be that on the -- I may want further
13 briefing, I may want -- I may want further information.

14 What has to happen is, I just simply set this hearing
15 as an inquiry as to what was before me, so that you could
16 present to me what your concerns are about these -- the impact
17 of these agreements on members of the class that I have
18 jurisdiction over.

19 So I thought that -- my thinking was that on the
20 nineteenth of September, at this stage all you need to have, I
21 think is to have the agreements. And I'd like to know if
22 there's anything else that you need to present to me to -- to
23 inform me about what -- what's going on.

24 I don't know why you need that from RD Legal, you have
25 -- you know the names of the players, do you not?

Ruling

17

1 MS. BENEDETTO: Yes, we do, Your Honor.

2 THE COURT: All right. So you have basically --

3 MS. BENEDETTO: More the solicitation and
4 communication, you know, with -- with the other entities like
5 CSG who have contracted with players, where we have, with the
6 numerous communication from players who were very confused, we
7 just wanted to make sure there was no confusion in the
8 communications before players entered into their agreements with
9 RD Legal.

10 THE COURT: Well and you certainly can present all
11 that -- you can present all of that to me, so I know whether or
12 not I'm getting into this or not. I have to make that threshold
13 -- that threshold decision.

14 But this is just that it was an explanatory, as I said
15 in my -- in my orders, exploratory hearing so that I -- all --
16 as far as I'm concerned, you will be presenting everything you
17 have to me, and I'll see whether I'm going to go any further
18 with it, or I'm just going to leave it alone.

19 So but I do need all the evidence. And you certainly
20 are in a position now to present all this evidence without RD
21 Legal responding. I'm not hearing from RD Legal that day. I'm
22 hearing from just the plaintiffs' lawyer. Because the
23 plaintiffs' lawyer says, I want to know how -- how this is going
24 to be impacting on you.

25 And then I will have subsequent hearings if I feel

1 important, and I will have subsequent submissions if I feel
2 important. And the only thing that -- that RD Legal can at that
3 stage present to me, if I think appropriate at that time, will
4 be some kind of legal argument that I cannot step on these
5 orders.

6 But that's the only thing that should come up on the
7 nineteenth. Right now it's completely exploratory, and it's
8 completely in your ballpark, Ms. Benedetto, to tell me what you
9 know.

10 Okay? So I don't think at this stage -- I don't think
11 at this stage you need anything more. When I hear what you have
12 to present to me, what happened from your point of view, I then
13 can get responses from the defendants, and we can set up, if
14 necessary, or if appropriate, a subsequent hearing and
15 subsequent submissions.

16 So I think that as far as I'm concerned, I am, at this
17 stage I think the issue is moot, and I'm not going to grant
18 either motion.

19 You'll present to me what you have, and I'll see if
20 this is an avenue that I wish to pursue. That's all there is --
21 that's all there is in front of me on the nineteenth. Okay?

22 MS. BENEDETTO: Is that just with regard to RD Legal,
23 Your Honor?

24 THE COURT: That's -- and also as far as Justice -- I
25 mean, that will -- I mean, I don't think we need another

Ruling

19

1 hearing, Mr. Scheff, on -- on Justice Fund, but you certainly
2 can present that to me on the nineteenth also, Ms. Benedetto.

3 Okay?

4 MS. BENEDETTO: Yes, Your Honor.

5 THE COURT: And you have that information --

6 MS. BENEDETTO: And then with regard --

7 THE COURT: -- I don't have that information, nor do
8 I have the -- the -- anything in front of me. Okay? Is there
9 any objection to that?

10 MS. BENEDETTO: Your Honor -- yes, Your Honor.

11 THE COURT: Do you have any problem with that? Okay.
12 Let's go on to --

13 MR. WILLINGHAM: No, Your Honor.

14 THE COURT: -- let's go on to --

15 MR. SCHEFF: No, Your Honor.

16 THE COURT: -- Legacy Pro Sports. So I'm going to
17 have an open-ended hearing on -- to be presented to me by the
18 plaintiff -- by the plaintiff telling me what this is all about.
19 Okay, Ms. Benedetto?

20 MS. BENEDETTO: Your Honor, Legacy Pro Sports is on
21 the phone, but there's no motion pending as to them. The
22 motion's pending as to Case Strategies Group, CSG, the entity
23 that Mr. Scheff represents.

24 THE COURT: Okay. That's -- I'm sorry. You're
25 absolutely right in that. You're absolutely right. I've just

1 misread my notes. CSG. Yes. Okay, Mr. Scheff.

2 MR. SCHEFF: Thank you, Your Honor. Your Honor is
3 aware of the history of our interactions with class counsel. A
4 motion for injunction was filed I believe in March. That motion
5 was withdrawn in June.

6 In the interim between March and June, we provided
7 information voluntarily to both the NFL and to class counsel.
8 With respect to the NFL, we listened to all of the concerns that
9 they had, we changed the name of the company, we completely
10 changed the website to avoid any trademark issues by the NFL.

11 And as far as I'm concerned, I've not heard anything
12 from them that they are dissatisfied, and I don't believe that
13 is an issue. With respect to the allegations that were in the
14 injunction motion filed by class counsel, no players were
15 identified. These were sort of anonymous complaints that were
16 detailed in the motion. Certain individuals who acted on behalf
17 of Case Strategies Group were named. We investigated all of
18 their communications of those particular individuals with
19 players. We found nothing offending whatsoever.

20 And we advised class counsel. We then proceeded in
21 light of class counsel's allegations that arguably we may have
22 misled players in certain communications. We went through a
23 remediation effort, which was fully shared with class counsel at
24 the time, and also detailed in status letters to the Court.

25 That remediation process involved a series of

1 disclosures that were both in writing and verbally to each
2 player. That list of disclosures was shared with class counsel
3 in advance of the remediation program going forward, and class
4 counsel never provided any comment to us with respect to those
5 disclosures.

6 So what happened was certain employees of Case
7 Strategies Group got on the phone with each player, went through
8 each of the disclosures, explained them to each of the players,
9 then sent them the disclosures to read and sign.

10 If they did not sign them, then their contract was
11 canceled. And as a result some number of contracts were
12 terminated. Each of the players who remain as clients of Case
13 Strategies Group are represented by counsel. Class counsel has
14 contacted these law firms, and each of these law firms, as far
15 as I know, because I've seen some of the communications, have
16 represented to class counsel that Case Strategies Group is
17 providing valuable services to their clients, and that their
18 clients fully understand the nature and terms of the contract.

19 We received a discovery request for Case Strategies
20 Group, a number of other entities, which have some relationship
21 to Case Strategies Group, and a number of individuals. We
22 received discovery requests, as well as requests for depositions
23 of I think nine people.

24 What we did, is we got on the phone with class
25 counsel, and we went through each entity. We told class counsel

1 that we -- because we were non-parties, that we required a
2 subpoena under Rule 45.

3 That has been explained by counsel for RD Legal. We
4 were ordered last week -- last Friday I think it was, to file
5 our opposition papers by today. We've not yet filed those
6 opposition papers, but will be doing so today. And there is
7 substantial case law that we cite which supports our position
8 that a Rule 45 subpoena's required.

9 Nonetheless, in our meet and confer sessions with
10 class counsel, we identified the entities that had absolutely
11 nothing to do with the NFL settlement. And upon receipt of a
12 subpoena, which we agreed to accept on behalf of each of the
13 entities and each of the individuals, we offered to provide a
14 declaration from a principal of those entities that were not
15 involved, which stated that they were not involved.

16 With respect to Case Strategies Group, we offered to
17 provide certain information. They already have a copy of our
18 contract, our revised contract. They got it during the meet and
19 confer period when the injunction motion was pending. We
20 offered to provide them email traffic. We offered to provide
21 them our contracts, our client list, and tape recordings with
22 clients from their calls post April 18th, 2017, which is when
23 the remediation began.

24 We said we would not produce information before April
25 18th. And, again, it was all dependent on the service of a

1 valid subpoena, which we agreed to accept service of. We also
2 agreed, as opposed to producing the nine people for deposition,
3 to produce an individual from CSG to testify in the nature of a
4 30(b)(6) deposition, who could cover, you know, what we would
5 hope would be all of the subject areas that class counsel was
6 interested in. And depending on the answers provided and
7 further meet and confers with class counsel, we would consider
8 whether or not to present other people for deposition.

9 But, again, that was all conditioned on receiving
10 valid subpoenas. Class counsel did not accept that suggestion.
11 We've not gotten subpoenas. As a result they filed their motion
12 to compel. As I said, we've not yet filed our response papers,
13 but we will be doing so today.

14 THE COURT: Okay. Ms. Benedetto, what do you need
15 from these people before a hearing?

16 MS. BENEDETTO: First of all, I need to know who these
17 players are, so that I can contact them. This -- the way this
18 remediation process went -- went forward, we never agreed that
19 the remediation process would be sufficient for us to satisfy
20 ourselves that the class members truly understood what exactly
21 they were getting for giving up a percentage of their potential
22 future monetary award by signing up with CSG.

23 And after the remediation -- and the reason why we didn't
24 weigh in on what they were purporting to disclose to these class
25 members in the remediation process, was because we didn't agree

Colloquy

24

1 with the remediation process from the get-go.

2 So we -- we got communications from the class members
3 following the remediation process which led us to -- which
4 confirmed our suspicions, was that their players were confused
5 all along. They still believed -- because of this -- the
6 initial name of the company, and representations made, it was
7 NFL Case Consulting, the players thought they were dealing with
8 the claims administrator and/or an official branch of the
9 settlement program from the NFL from the get-go.

10 And they didn't understand, even after their -- the
11 remediation process, that they had been dealing with this third
12 party entity. And they thought that they needed to deal with
13 this third party entity to make a claim and obtain any recovery
14 of a monetary award.

15 THE COURT: All right. Well let -- one second. Ms.
16 Benedetto, you -- let me just cut through, because it may be
17 that we can resolve this.

18 Mr. Scheff, do you have any objection to naming the
19 people that she is -- she has identified?

20 MR. SCHEFF: She's never identified any player to us
21 that is allegedly under some confusion as a result of any
22 communication that they've had --

23 THE COURT: Well you said you've remediated -- one
24 second. Mr. Scheff, you said you remediated --

25 MR. SCHEFF: We have. All I'm saying, Your Honor, is

1 --

2 THE COURT: Well I want to know who those people are.
3 Who are those people?

4 MR. SCHEFF: If we get a valid subpoena -- if we get
5 a valid subpoena --

6 THE COURT: All right. Okay.

7 MR. SCHEFF: -- we are happy to supply her with a list
8 --

9 THE COURT: If it has to do with the NFL -- one
10 second. If it has to do with the NFL, then I want to -- then I
11 want -- NFL players, I want to know who they are. If you don't
12 want to do that, we'll wait until the nineteenth and then we'll
13 have this argument in open Court.

14 So you have a choice.

15 MR. SCHEFF: If we get a valid subpoena, Your Honor,
16 we're happy --

17 THE COURT: Well I just told you what your choice is,
18 Mr. Scheff. I will --

19 MR. SCHEFF: Was that the --

20 THE COURT: -- and -- how can they possibly present
21 what they believe is -- are the facts, without knowing who these
22 players are?

23 MR. SCHEFF: Your Honor, they claim -- they claim that
24 players have contacted them and stated that they're confused.
25 They've never identified a single player who is allegedly a

Colloquy

26

1 client of ours -- we've asked -- who has this confusion.

2 Each one of our clients is represented by a lawyer.

3 They know who those lawyers are, they've communicated with those
4 lawyers, and their lawyers have told class counsel that their
5 clients understand fully what their relationship is with CSG.

6 We've offered to investigate any claim of confusion.
7 And we've received no information.

8 THE COURT: All right, Ms. Benedetto?

9 MS. BENEDETTO: Basically, CSG got all of its clients
10 lawyered up. They referred them to the law firm, so as they
11 believe that they could prevent class counsel from communicating
12 with the class members --

13 MR. SCHEFF: That is absolutely inaccurate.

14 MS. BENEDETTO: -- by putting law firms in between CSG
15 and class counsel.

16 MR. SCHEFF: That is absolutely inaccurate, and you
17 know that. You know that is inaccurate.

18 MS. BENEDETTO: I don't know that.

19 MR. SCHEFF: Each of these people are represented by
20 independent counsel of their own choice. We don't control those
21 counsel --

22 MS. BENEDETTO: After they were --

23 THE COURT: I don't -- look --

24 MS. BENEDETTO: -- after they became a client of CSG.

25 THE COURT: Well I have to find out what the facts

Colloquy

27

1 are, Mr. Scheff. I am ordering --

2 MR. SCHEFF: I understand that.

3 THE COURT: -- I am ordering -- listen, I am ordering,
4 and if you don't think that I have the authority, appeal it. I
5 am telling you I want these --

6 MR. SCHEFF: Your Honor --

7 THE COURT: -- I want the -- I want class counsel to
8 know the names of the members of my -- of the class before me
9 who are involved in these allegations. That's what I need --

10 MR. SCHEFF: Your Honor, I would ask -- I would ask
11 that you refrain from entering an order right now. We've not
12 filed our opposition papers. We were ordered to file them --

13 THE COURT: All right. Okay. You file today.

14 MR. SCHEFF: I would ask you review them, and
15 then --

16 THE COURT: Okay. That's fair enough. I will reserve
17 decision on it. I will reserve decision and --

18 MR. SCHEFF: Thank you.

19 THE COURT: -- and I will let you know in the next --
20 when I get a chance to review the papers. It seems to me that
21 this -- at this stage, from what I know, that this very well may
22 be a -- a reasonable request by the plaintiff -- plaintiffs
23 counsel, but I am not ruling on it.

24 So I will -- I will decide that in the next few days
25 after I receive -- and I don't need further -- I don't need

Colloquy

28

1 further argument on it.

2 MR. SCHEFF: Thank you, Your Honor.

3 THE COURT: I think that resolves everything. Is
4 there anything else?

5 MS. BENEDETTO: Thank you, Your Honor.

6 THE COURT: Mr. Burns, do you want to be heard on
7 this?

8 MR. BURNS: No. Thank you, Your Honor.

9 THE COURT: Okay. Is there anyone else -- is there
10 anyone else who -- who wants -- who wants to address me? Okay.

11

12 UNIDENTIFIED COUNSEL: No, Your Honor.

13 THE COURT: Okay. This record will be -- this
14 conference will be open, so that you have a copy of it. Okay?
15 In other words, as far as I understand --

16 MS. BENEDETTO: Thank you, Your Honor.

17 THE COURT: -- this will be available. Okay. All
18 right. I'll -- if there's any further issues, you contact my
19 law clerk, Andrew Stahl. And, Andrew, do you have with you
20 Alex?

21 MR. STAHL: I do, Judge. He's been sitting in on this
22 as part of our transition.

23 THE COURT: Okay. Alex, why don't you introduce
24 yourself?

25 MR. USSIA: Hi. I'm Alex Ussia the incoming law

1 clerk, and I'm replacing Andrew.

2 THE COURT: Okay. And you're going to be -- you're
3 going to be the law clerk assigned to the NFL litigation, is
4 that correct?

5 MR. ETIEM: That's correct. Yes.

6 THE COURT: Okay. Thank you very much for coming in
7 today, I appreciate that, Alex. Okay. Thank you. Court is
8 adjourned.

9 (Proceedings concluded at 10:58 a.m.)

10 * * * * *

11 C E R T I F I C A T I O N

12 I, Josette Jones, court approved transcriber, certify that the
13 foregoing is a correct transcript from the official digital
14 audio recording of the proceedings in the above-entitled matter.

15 **Josette Jones**
Digitally signed by Josette Jones
DN: cn=Josette Jones, o, ou,
email=dianadoman@comcast.net, c=US
Date: 2017.09.01 13:09:55 -0400

16 -----

17 JOSETTE JONES

DATE

18 DIANA DOMAN TRANSCRIBING, LLC

Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

IN RE: PAYMENT CARD	:	05-MD-1720 (MKB)
INTERCHANGE FEE AND MERCHANT	:	
DISCOUNT ANTITRUST	:	
LITIGATION,	:	
	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	Monday, March 30, 2015
	:	

- - - - - X

TRANSCRIPT OF CIVIL CAUSE FOR ORDER TO SHOW CAUSE
BEFORE THE HONORABLE JAMES ORENSTEIN
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For Class	ROBBINS GELLER RUDMAN & DOWD, LLP
Plaintiffs:	665 West Broadway #1900
	San Diego, California 92101
	BY: ALEXANDRA S. BERNAY, ESQ.
	CARMEN A. MEDICI, ESQ.

For EPS:	KROB LAW OFFICE
	BY: SCOTT KROB, ESQ.

Court Reporter: Richard W. Barry, RPR
Official Court Reporter
E-mail: rwbarrycourtreporter@gmail.com

Proceedings recorded by computerized stenography.
Transcript produced by Computer-aided Transcription.

- C O L L O Q U Y -

13

1 information is being disseminated. That will become something
2 I am very interested in for other purposes, but not in terms
3 of figuring out how to get the appropriate information
4 disclosed.

5 So, what else are you looking-- we are going to have
6 30(b)(6). That will lead to some interrogatories. What else?

7 MS. BERNAY: So, another thing that we have asked
8 for from the beginning back in, in fact, January, the number
9 and identity of the merchants who have signed up for this
10 program.

11 THE COURT: Yes.

12 MS. BERNAY: We still have not been given that.

13 THE COURT: When will they have that?

14 MR. KROB: I have a list. We have not-- I explained
15 to counsel we have some concerns about that. There is really
16 two reasons. First of all, what we are here on today is a
17 show cause for compliance with Judge Brodie's order.

18 THE COURT: Mr. Krob, I'm overseeing discovery on
19 this matter. So what we are here to discuss, among other
20 things, is when are they going to get this information that
21 they have demanded and that you have not sought to quash.

22 So, when will they have it in their hands? If you
23 have it here today, by all means, walk it across the room.

24 MR. KROB: I want to discuss its use before we do
25 that.

- C O L L O Q U Y -

14

1 THE COURT: What, you want to discuss what?

2 MR. KROB: The use they are going to make of the
3 list. I think there is some protections EPS is I entitled to.
4 I think what Judge Brodie told us --

5 THE COURT: Mr. Krob, have you made a motion for
6 protective order?

7 MR. KROB: We have not received a formal discovery
8 request. All we received is an E-mail saying these are the
9 things we would like to get.

10 THE COURT: That's your view as well, Ms. Bernay?

11 MS. BERNAY: No, our view is that all of these
12 matters fall under Judge Brodie's February 5th order. Where
13 we specifically discussed in fact --

14 THE COURT: I thought Judge Brodie entered an order
15 as well.

16 MR. KROB: That was my first point. She entered an
17 order that says four specific items that we are to produce and
18 among other things, and then she doesn't specify what those
19 are. We went through and picked out what those were. And in
20 general, what she wanted was information about two things.
21 How the MRP works, and what the merchants are being told.

22 She never ordered us and we would vehemently object
23 to without protection, she never order us to provide a list to
24 provide a merchant's --

25 She wanted to know what they are told and how the

- C O L L O Q U Y -

15

1 program works. We provided that information so this is an
2 example of every time we provide something, there is something
3 else requested. There is no order by the Court and no formal
4 discovery request for the merchant list.

5 THE COURT: I'm troubled by that, Mr. Krob, because
6 I'm looking at the transcript of the colloquy between Judge
7 Brodie and you. I believe this is page 7 of the February 6th
8 transcript. Do you have the--

9 "THE COURT: Do you have a record of everyone who
10 signed the contract?"

11 "Mr. Krob -- "

12 MR. KROB: Your Honor.

13 THE COURT: "Mr. Krob: I believe, MCA just given us
14 a list of those who signed the contract."

15 "THE COURT: Why don't you provide that
16 information."

17 "Mr. Krob: Okay."

18 MR. KROB: That is the NCAG list.

19 MS. BERNAY: Your Honor, if I can jump in for a
20 moment.

21 Page 17 of the transcript is where it-- from the
22 bottom of 16 to page 17, of the transcript is where the Court
23 then focuses on the MRP.

24 Mr. Krob says, we can provide them the information
25 about what is provided to merchants who signed up for the MRP,

- C O L L O Q U Y -

16

1 or who ask to sign up or inquire about the MRP. And-- this
2 has happened a number of times in this debate that we have
3 been having.

4 THE COURT: Okay. I'm satisfied. This is--

5 MR. KROB: It is not asked.

6 THE COURT: I'm satisfied that this is a dispute we
7 shouldn't continue to have. Please provide Ms. Bernay the
8 information. If you have it there, at the table, just walk it
9 across the room if you would, please.

10 MR. KROB: I ask we discuss protections to it first.

11 THE COURT: I don't believe there is a need for
12 that, sir. Please walk it across the room.

13 MR. KROB: I would like to make a record then, Your
14 Honor.

15 THE COURT: Please make a record.

16 MR. KROB: The record I would like to make is that,
17 class counsel has indicated that with this list, they intend
18 to contact EPS merchants. We don't think that that is
19 warranted in this case. We think that is very damaging to
20 EPS, in this case. We think there are reasonable alternatives
21 to that damaging approach.

22 THE COURT: We are not making any decisions today
23 about that. You want to seek protection against that, by all
24 means, file an appropriate motion, I'm sure Ms. Bernay, you
25 will agree not to take any action with the information until